IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6.12.2007

CORAM:

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE R.REGUPATHI

H.C.P.No.1391 of 2007

K.Jeevarathinam .. Petitioner

Vs.

1. The State of Tamilnadu
rep. by its Secretary to Government
Prohibition and Excise Department
Fort St.George, Chennai-9.

2. The District Collector
and District Magistrate
Villupuram District
Villupuram. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue Habeas Corpus as stated therein.

For Petitioner : Mr.O.S.Thilak Pasumbadiyar
For Respondents : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.D.DINAKARAN,J.)

Challenging the order of detention dated 6.9.2007 made in No.C2/39609/2007, passed by the second respondent branding the friend of the petitioner, one Sankar alias Panai Sankar as a 'Bootlegger' under the provisions of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), the petitioner, who is now confined in Central Prison, Cuddalore, has filed this Habeas Corpus Petition to set aside the order of detention and directing the respondents to produce him before this Court and set him at liberty.

2.1. The order of detention dated 6.9.2007 was passed on the

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basis of ground case in Crime No.1194 of 2007 for alleged commission of offences punishable under Sections 4(1)(i), 4(1)(aaa) and 4(1-A) of the Tamil Nadu Prohibition Act. The allegation against the detenu was that on 18.8.2007, when the Inspector of Police, Villupuram Prohibition Enforcement Wing along with his police party conducted prohibition raid they found the detenu selling arrack. The detenu was arrested, the contraband was seized and the chemical analysis report states that the sample arrack was mixed with 3.18 mg% w/v of atropine a poisonous substance, which would endanger life.

2.2. That apart, the detaining authority also took note of four adverse cases pending against the detenu in Crime Nos.131, 699, 1124 and 1170 of the 2007 for the offences punishable under Sections 4(1-A), 4(1)(aa), 4(1-A), 4(1)(aaa), 4(1-A) of the Tamil Nadu Prohibition Act read with Rules 5 and 6 of the TNRS Rules, and Sections 4(1)(aa) and 4(1-A) of the Tamil Nadu Prohibition Act.

2.3. Considering these activities of the detenu are prejudicial to maintenance of public health and public order, the detaining authority passed the impugned order. The detenu was declared as a "bootlegger" and was kept in custody at Central Prison, Cuddalore.

3. The learned counsel for the petitioner inviting our attention to paragraph (3) of the grounds of detention dated 6.9.2007, wherein it is stated that the detenu was remanded till 31.8.2007 by the learned Judicial Magistrate No.1, Villupuram and that his remand was extended up to 14.9.2007 on 31.8.2007, and the proceedings of the Judicial Magistrate No.1, Villupuram dated 31.8.2007, wherein it is stated that the accused was not produced and to be produced on 14.9.2007, contends that there is no valid remand on the date of passing of the detention order and therefore, the order of detention is vitiated.

4. We have perused the entire materials placed before us and heard the submissions of both sides.

5. As pointed out by the learned counsel for the petitioner, in paragraph (3) of the grounds of detention dated 6.9.2007, it is stated that the detenu was remanded in the ground case by the order of the learned Judicial Magistrate No.1, Villupuram till 31.8.2007 and thereafter the remand was extended up to 14.9.2007, whereas, at Page 50 of the booklet, in the proceedings dated 31.8.2007 of the learned Judicial Magistrate No.1, Villupuram it is stated that the accused was not produced and to be produced on 14.9.2007. Thus, it is apparent on the face of the records that there is no valid remand on the date of passing of the detention order. This aspect of the case was not properly considered by the detaining authority and the same vitiates the order of detention.

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For the reasons aforesaid, the impugned order of detention suffers for non-application of mind and as such, the same is liable to be set aside and accordingly, the same is set aside. This petition is allowed. The order of detention dated 6.9.2007 is set aside. The detenu is directed to be set at liberty forthwith unless his presence is required connection with in any other crime. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To:

1.The Secretary to Government
Prohibition and Excise Department
State of Tamilnadu
Fort St.George, Chennai-9.

2.The District Collector
and District Magistrate
Villupuram District
Villupuram.

3.The Public Prosecutor
High Court, Madras.

4.The Superintendent,
Central Prison, Cuddalore.

5.The Joint Secretary to Govt.
Public (Law and Order) Department,
F.S.G., Chennai -9.

VSV (CO)
km/4.1.

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